

REMARKS

Claims 1-10 are pending. Previous rejections under 35 USC 103 have been withdrawn.

1. Petition to Accept Color Drawings:

A Petition under 37 CFR 1.84(a)(2) was presented at the time this application was filed. In the instant Office Action, the Office indicated that the Petition is not approved. Accordingly, applicants have amended the Specification to delete the language required for color drawings, and hereby request that the previously filed black and white drawing set be used in this application.

2. Rejection Under 35 USC 102(b):

Claims 1-10 stand rejected under 35 USC 102(b) based upon a public use or sale of the invention. The Office noted that e-mail correspondence that was exhibited in the previously filed Robinson Declaration provides evidence of a public use more than one year prior to the filing of the subject application, and required information concerning whether any written contract of confidentiality, obligation of secrecy, or use restriction was in place in respect of the subject invention.

Applicants respond as follows. All of the individuals involved in the e-mail communications exhibited to the Robinson Declaration were employees of the University of California, Los Alamos National Laboratory (UC/LANL) at the relevant time, and therefore were subject to all UC/LANL policies as a condition of their employment. One of the policies required all employees to maintain all Laboratory proprietary data and privileged information in confidence.

Attachment A hereto is a copy of UC/LANL's standard Offer Letter to prospective employees, which all employees were required to sign as an indication of their acceptance of employment under the terms and conditions specified therein (the attached document being a redacted copy of an actual, signed Offer Letter from 2002). The fourth paragraph of page 2 therein states:

Compliance with the Laboratory's policies and procedures as set forth in the Administrative Manual and as modified from time to time is a condition of the offer of employment and of continued employment.

Attachment B hereto is a copy of the Administrative Manual's Policy 721, which states, in relevant part:

An employee may not use proprietary data or privileged information obtained through Laboratory employment ... in any unauthorized manner.

Such information must be held in confidence until it is released through the proper channels to Laboratory employees, to the public, or to potential vendors.

The Policy defines "*Privileged Information*" to include "*unpublished information relating to technological and scientific developments*". This Policy was in force from September 27, 1991 through May 31, 2006.

Accordingly, the employees of UC/LANL involved in the "Finishing Team" were contractually obligated to hold information concerning the claimed invention in confidence, as such information constituted *unpublished information relating to technological and scientific developments*.

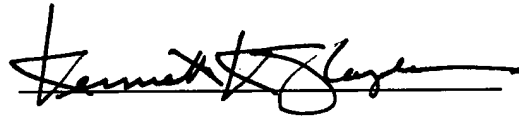
Submitted herewith is a Second Declaration of Donna L. Robinson. The evidence presented in the Second Robinson Declaration establishes that no one but Robinson used the invention prior to the filing of the subject application. Accordingly, the rejection should now be withdrawn.

3. Conclusion:

All patentability and formalities issues in this case have now been fully addressed. Therefore, applicants kindly request an early indication of allowance of claims 1-10.

Respectfully submitted,

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